**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE ARMED FORCES**

| | | |
|---|---|---|
| **UNITED STATES**,<br>*Respondent*,<br><br>v.<br><br><br>Senior Airman (E-4)<br>**KENNETH P. ARMOUR II**<br>United States Air Force<br>*Petitioner*. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | UNITED STATES RESPONSE TO SUPPLEMENT TO PETITION FOR GRANT OF REVIEW<br><br>Crim. App. Misc. Dkt. No. 2025-10<br><br>USCA Dkt. No. 26-0116/AF<br><br>17 February 2026 |

---

**UNITED STATES RESPONSE TO SUPPLEMENT TO PETITION FOR GRANT OF REVIEW**

---


KATE E. LEE, Maj, USAF
Appellate Government Counsel
Government Trial & Appellate
Operations Division
United States Air Force
1500 W. Perimeter Rd., Ste. 1190
Joint Base Andrews, MD 20762
(240) 612-4800
Court Bar No. 37241

MARY ELLEN PAYNE
Associate Chief
Government Trial & Appellate
Operations Division
United States Air Force
1500 W. Perimeter Rd., Ste. 1190
Joint Base Andrews, MD 20762
(240) 612-4800
Court Bar No. 34088

MATTHEW D. TALCOTT, Col, USAF
Chief
Government Trial & Appellate
Operations Division
United States Air Force
1500 W. Perimeter Rd., Ste. 1190
Joint Base Andrews, MD 20762
(240) 612-4800
Court Bar No. 33364

## INDEX OF BRIEF

## TABLE OF AUTHORITIES

### SUPREME COURT OF THE UNITED STATES



### COURT OF APPEALS FOR THE ARMED FORCES

**AIR FORCE COURT**



**FEDERAL COURTS**

## OTHER AUTHORITIES

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE ARMED FORCES**

| | | |
|---|---|---|
| **UNITED STATES**,<br>*Respondent* | ) | UNITED STATES RESPONSE TO SUPPLEMENT TO PETITION FOR GRANT OF REVIEW |
| v. | ) | |
| | ) | Crim. App. Misc. Dkt. No. 2025-10 |
| Senior Airman (E-4)<br>**KENNETH P. ARMOUR II**<br>United States Air Force | ) | USCA Dkt. No. 26-0116/AF |
| *Petitioner.* | ) | 17 February 2026 |

**TO THE HONORABLE, THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES**

## ISSUE PRESENTED

**WHETHER THIS COURT SHOULD AFFIRM THE MILITARY JUDGE'S SUPPRESSION RULING BECAUSE INFORMATION GAINED FROM MULTIPLE UNLAWFUL SEARCHES AFFECTED LAW ENFORCEMENT AGENTS' DECISION TO SEEK A SEARCH AUTHORIZATION AND THE SEARCH AUTHORITY'S DECISION TO GRANT IT.**

## STATEMENT OF STATUTORY JURISDICTION

The Air Force Court of Criminal Appeals (AFCCA) reviewed this case under Article 62(b), UCMJ. This Court has jurisdiction over this matter under Article 67(a)(3), UCMJ.

## STATEMENT OF THE CASE

On 15 May 2024, the Office of Special Trial Counsel referred the following charges and specifications against Appellee to a general court-martial: one charge and one specification of conspiracy to distribute child pornography, in violation of Article 81, UCMJ; one charge and four specifications of possessing, viewing, receiving, and distributing child pornography, in violation of Article 134, UCMJ; and one additional charge and specification of conspiracy to distribute child pornography, in violation of Article 81, UCMJ. (*Charge Sheets*, ROT, Vol. 1.)

On 24 February 2025, the military judge granted a defense motion to suppress evidence from Petitioner's devices on the grounds that the affidavits supporting the search and seizure authorization were defective. (App. Ex. V, IX.) Following an unsuccessful motion for reconsideration, (*see* App. Ex. X, XI, XII), the United States was granted a continuance, (*see* App. Ex. XIII, XIV, XV), during which time it obtained a new search and seizure authorization for Appellee's devices. (App. Ex. XVI, Atch. 8.)

On 9 July 2025, following a second defense motion to suppress, the military judge again suppressed the evidence—this time on the grounds that although there was probable cause for the new search, the evidence was a product of the prior illegality because it had been preserved in law enforcement custody and therefore not derived from an independent source. (App. Ex. XVIII.)

On 22 August 2025, the United States filed an interlocutory appeal with the Air Force Court of Criminal Appeals. (*Article 62 Appeal Notice*, ROT, Vol. 1.)

In a unanimous decision issued on 5 December 2025, the Air Force Court of Criminal Appeals held that the military judge erred in his application of the independent source doctrine and vacated his ruling. United States v. Armour, No. 2025-10, 2025 LX 534035 (A.F. Ct. Crim. App. Dec. 5, 2025).

## STATEMENT OF THE FACTS

### *The January 2022 Searches*

On 1 August 2021, the National Center for Missing and Exploited Children (NCMEC) received a CyberTipline report from MediaLab/Kik that an account with the username "aftermatter"[1] had uploaded and/or shared media files depicting the children being sexually abused. (App. Ex. IV, Atch. 3, 7, 8.) The report noted that the "aftermatter" account had logged into Kik from four different internet protocol (IP) addresses and uploaded apparent child pornography from three others. (Id.)

During the ensuing law enforcement investigation, Investigator (Inv.) KF attempted to trace the IP addresses to "determine whether they were a home

[1] The account was also associated with the email address "aftermatters@yahoo.com" and the user ID "aftermatter_tex." (App. Ex. IV, Atch. 3.)

physical address, a VPN, or a proxy server." (R. at 70-71.) All but one of the IP addresses from the NCMEC report were associated with proxy servers, which are "used to hide and conceal physical IP addresses." (R. at 70-71; App. Ex. IV, Atch. 4.) The only IP address that could be traced to a physical location—71.76.6.249, used to log into the suspect account—led Inv. KF to a residential internet connection serviced by Charter Spectrum. (Id.)

Inv. KF, who understood this to mean that the user behind the suspect account "had to physically be in the house on the network" when they "used [the IP address] to log into the account," then obtained a warrant for the Charter Spectrum subscriber information. (R. at 71.) The information disclosed by Charter Spectrum revealed that the internet connection in question was registered to an airman named BB at 4 Beard Drive, Dalzell, South Carolina. (R. at 72-73.)

Using this information, Inv. KF applied for and was granted a warrant to search the residence at 4 Beard Drive and seize items such as computer systems, data storage devices, cell phones, internet modems, etc. (R. at 73-74; App. Ex. IV, Atch. 4.) The search warrant for 4 Beard Drive contained the following articulation of probable cause:

> On 8/01/2021 NCMEC (National Center for Missing and Exploited Children) generated a report from Kik/Medialab of reported child pornography. Inv. [KF] viewed the reported media and confirmed it to be child pornography. The *associated* IP address was 71.76.6.249. Inv. [KF] through training and experience was able to determine the

> IP address provider as Spectrum/Charter. A search warrant was delivered to Charter for the account holder information at the time of the reported incident and was returning belonging to 4 Beard Dr, Dalzell SC 29040, located in Sumter County, belonging to the name of [BB].

(App. Ex. IV at 59) (emphasis added).

While executing the search on 26 January 2022, Inv. KF discovered postal mail addressed to Petitioner. (R. at 27, 75.) After confirming that Petitioner used to reside at 4 Beard Drive as BB's roommate but was then deployed to Muwaffaq Salti Air Base (MSAB), Jordan, Inv. KF coordinated with the Office of Special Investigations (OSI) to effectuate a search and seizure at the deployed location. (App. Ex. IV, Atch. 7; R. at 27, 74-75.)

***The February 2022 Searches***

On 10 February 2022, OSI at MSAB requested authorization to seize Petitioner's devices from his person and deployed dorm room and search them for evidence of child pornography offenses. (App. Ex. IV, Atchs. 7, 8.) In the affidavits supporting the requests, OSI relied partially on Inv. KF's recitation of the facts to describe the Charter IP address 71.76.6.249 as "the reported IP address used when uploading files." (Id.)

After the search authorizations were granted, OSI agents seized various electronic devices from Appellee's person and deployed residences. (App. Ex. IV, Atch. 14.) Subsequent analysis by the Department of Defense Cyber Crime Center

(DC3) uncovered NCMEC hash set matches, "potential CSAM," and other evidence on Apple iPhone XR seized from Appellee's person and an iPad seized from his deployed dorm room. (App. Ex. IV, Atch. 15.) Based on this evidence, Appellee was charged with possessing, viewing, receiving, and distributing child pornography, as well as conspiracy to distribute child pornography. (*Charge Sheet*, ROT, Vol. 1.)

***The First Suppression Ruling***

During pretrial motions practice, Petitioner's trial defense counsel moved to suppress evidence from, *inter alia*, the searches of BB's Charter subscriber information, BB's residence at 4 Beard Drive, and Petitioner's person and deployed residence. (App. Ex. IV, VI.) The defense alleged that law enforcement "knowingly and intentionally, or with reckless disregard for the truth, included a false statement or omitted a material fact" in the affidavits. (Id.)

With respect to the searches of BB's Charter subscriber information and the February 2022 searches of Accused, the defense asserted that the affidavits falsely stated that IP address 71.76.6.249 was used when "upload[ing]" files, even though the NCMEC report only described the IP address as being associated with a login to Kik (not uploading files). (Id.) With respect to the search of BB's residence, on the other hand, Petitioner did not specify what the purported falsity was:

> Inv. [KF] knowingly and intentionally, or with reckless disregard for the truth, included a false statement or

> omitted a material fact in the information presented to a Sumter County Judge in an affidavit in support of a request for a search warrant for SrA [BB]'s residence.

(App. Ex. IV.)

The military judge found that the February 2022 affidavits' erroneous description of 71.76.6.249 as being associated with "upload" activity (instead of "login" activity) constituted a "false statement…written with a reckless disregard for the truth," and granted the defense motion with respect to the searches and seizures of Petitioner's person and deployed residence. (App. Ex. IX.) The judge did not rule on the legality of the January 2022 searches of BB's Charter subscriber information or residence, or suppress the information derived therefrom. (Id.) In a footnote, the judge noted BB's Fourth Amendment rights were "not at issue in this motion." (Id.)

***The March 2025 Reseizure of Suppressed Evidence***

Subsequent to the judge's ruling, the case was continued, during which time the United States obtained new search authorizations. (App. Ex. XIII, XV.) On 24 March 2025, OSI requested authorization to reseize the devices that had been previously seized from Petitioner's person and deployed residence. (App. Ex. XVI, Atch. 8.) The supporting affidavit from OSI provided: (a) background information about the internet, file-sharing, IP addresses, Kik, and VPNs; (b) an overview of the investigative steps taken prior to 10 February 2022; (c) a detailed

and factually accurate recitation of why the "aftermatters" account's login event on IP address 71.76.6.249 gave OSI reason to believe that Appellee's devices might contain evidence of child pornography offenses; and (d) a statement that the devices were "in the same state as when they were seized" by virtue of being in military law enforcement's custody since February 2022. (Id.) The affidavit did not contain any information learned because of the February 2022 searches, which it noted had been invalidated due to the misstatements regarding IP address 71.76.6.249. (Id.) A competent search authority determined there was probable cause and granted the authorization. (Id.)

***The Second Suppression Ruling***

On 9 April 2025, trial defense counsel again moved to suppress the evidence from Petitioner's devices, alleging that there was no probable cause for the March 2025 search and seizure, which it described as "the fruits of Investigator [KF]'s unlawful searches" of BB's Charter subscriber information and residence. (App. Ex. XVI.) In response, the United States reminded the judge that Petitioner lacked standing to challenge the searches of BB's subscriber data and residence, and argued that the March 2025 search and seizure was a "genuinely independent source" of the evidence at issue. (App. Ex. XVII, ¶¶ 51-52, 57, 67.)

As with his first ruling, the military judge did rule on the legality of the searches for BB's Charter information or residence, or any derivative evidence.

(*See generally* App. XVIII.) Instead, the military judge granted the defense motion to suppress with respect to Petitioner's devices, concluding that the independent source doctrine did not apply. (App. XVIII.) Despite finding that the two-prong test for the independent source doctrine from Murray v. United States, 487 U.S. 533, 542 (1988), was technically satisfied, the judge opined that the March 2025 search authorization was not a genuinely independent source of the evidence because it had been preserved in police custody. (App. Ex. XVIII, ¶ 64-66.) The United States appealed.

***The Interlocutory Appeal***

In the ensuing interlocutory appeal, Petitioner again attempted to rely on the purported illegality of Inv. KF's searches of BB's Charter information and residence to argue that suppression was warranted. (*See* Pet. Br., Appx. at 78a-81a.) In response, the United States again pointed out that Petitioner lacked standing to challenge these searches. (Pet. Br., Appx. at 91a-92a.)

In a unanimous, published decision vacating the military judge's ruling, AFCCA held that the military judge abused his discretion and that the independent source doctrine applied. Armour, 2025 CCA LEXIS 559, at *24-25. The lower court's analysis did not discuss the searches of BB's Charter subscriber information or residence. *See generally.* Id. Petitioner now alleges that AFCCA

erred by failing to consider his arguments regarding the January 2022 searches of BB's Charter subscriber information and residence. (*See* Pet. Br.)

## ARGUMENT

### THIS COURT SHOULD DENY REVIEW BECAUSE BOTH THE MILITARY JUDGE AND THE AIR FORCE COURT OF CRIMINAL APPEALS PROPERLY DISREGARDED ARGUMENTS THAT PETITIONER LACKED STANDING TO MAKE.

#### *Standard of Review*

This Court reviews a military judge's decision to suppress evidence for an abuse of discretion, "then decide[s] whether the Court of Criminal Appeals was wrong in its examination" of the same. United States v. Harborth, 85 M.J. 469, 476 (C.A.A.F. 2025). A military judge abuses their discretion when "[their] findings of fact are clearly erroneous, the court's decision is influenced by an erroneous view of the law, or the military judge's decision on the issue at hand is outside the range of choices reasonably arising from the applicable facts and the law." Id. This standard applies to interlocutory appeals under Article 62, UCMJ. United States v. Mitchell, 76 M.J. 413, 417 (C.A.A.F. 2017).

#### *Law*

The Fourth Amendment's protections against unreasonable search and seizure are "personal rights which…may not be vicariously asserted." Rakas v. Illinois, 439 U.S. 128, 133-34 (1978) (citation omitted). Thus, "a defendant can

urge the suppression of evidence obtained in violation of the Fourth Amendment only if that defendant demonstrates that *his* Fourth Amendment rights were violated by the challenged search or seizure." United States v. Padilla, 508 U.S. 77, 81 (1993) (emphasis in original). This requires the defendant to establish that he "personally has an expectation of privacy in the place searched, and that his expectation is reasonable," Minnesota v. Carter, 525 U.S. 83, 88 (1998)—a requirement that is frequently referred to as Fourth Amendment "standing." Byrd v. United States, 584 U.S. 395, 410 (2018); *see also* United States v. Visser, 40 M.J. 86, 91 (C.M.A. 1994) ("[T]he defendant has the burden to show that he has standing to challenge government action as a Fourth Amendment violation."). Absent such standing, a criminally accused may not seek relief for a purportedly unconstitutional search. Byrd, 584 U.S. at 410.

***Analysis***

Here, in challenging AFCCA's decision to vacate the military judge's ruling, Petitioner asserts that: (1) suppression was warranted because the March 2025 search authorization incorporated information "unlawfully obtained" from the searches of BB's Charter account and residence; and (2) this "alternative ground for relief was within the AFCCA's scope of review." (App. Br. at 16, 20.) This Court should be unconvinced and deny review, for Petitioner's entire argument is premised on the legally flawed premise that he can challenge the constitutionality

of searches for property and premises in which he had no reasonable expectation of privacy. *See* Rakas, 439 U.S. at 133-34 ("[S]ince the exclusionary rule is an attempt to effectuate the guarantees of the Fourth Amendment, it is proper to permit only defendants whose Fourth Amendment rights have been violated to benefit from the rule's protection.").

## A. Petitioner lacks standing to challenge the searches of BB's Charter subscriber information and residence at 4 Beard Drive.

Despite bearing the onus of demonstrating that he had a reasonable expectation of privacy in BB's Charter information and 4 Beard Drive, Petitioner has made "virtually no effort to carry his burden"—perhaps because he knows it is an impossible one. United States v. Gonzalez, 560 F. App'x 554, 558 (6th Cir. 2014) (no standing to suppress evidence from another person's phone account where defendant "made no effort" to establish reasonable expectation of privacy). This Court should take Petitioner's silence for what it is—a tacit concession that, as set forth below, he lacks Fourth Amendment standing to challenge the searches with which he now takes issue.

### *1. Petitioner does not have any expectation of privacy in BB's Charter subscriber information, much less a reasonable one.*

It is well-established that there is no reasonable expectation of privacy in basic subscriber information. United States v. Maxwell, 45 M.J. 406, 418 (C.A.A.F. 1996) (there is "no reasonable expectation" that network subscriber

information will remain private); United States v. Rosenow, 50 F.4th 715, 738 (9th Cir. 2022) (no reasonable expectation of privacy in basic subscriber information). This is because when users subscribe to a service using their name, address, and telephone number, "they have conveyed [that information] to another person—the system operator." Guest v. Leis, 255 F.3d 325, 336 (6th Cir. 2001) ("[C]omputer users do not have a legitimate expectation of privacy in their subscriber information."). In so doing, subscribers have "assumed the risk" that their service providers will "reveal [that information] to police," and thereby forfeited any expectation of privacy in the same. United States v. Bynum, 604 F.3d 161, 164 (4th Cir. 2010).

Considering this, even BB—the actual account holder—would not have a reasonable expectation of privacy in his Charter subscriber information, and thus would be unable to challenge law enforcement's "search" of the same.[2] *See* United States v. Christie, 624 F.3d 558, 574 (3d Cir. 2010) (where defendant had "no reasonable expectation of privacy, he "cannot establish a Fourth Amendment

---

[2] This is true even if we assume *arguendo* that Inv. KF's warrant for the subscriber information was invalid, since the information could have easily been obtained via an independent source—i.e., an administrative subpoena—instead. *See* 18 U.S.C. § 2703(c)(2) (requiring ISPs to provide subscriber information in response to subpoenas).

violation"). It logically follows, then, that Petitioner cannot challenge the search for the subscriber information either—especially since it is not even his account. *See, e.g.,* United States v. Lustyik, 57 F. Supp. 3d 213, 223 (S.D.N.Y. 2014) (no expectation of privacy in another person's email account); United States v. Vines, No. 1:17-cr-00160-JRS-TAB-01, 2018 U.S. Dist. LEXIS 186013, at *12 (S.D. Ind. Oct. 31, 2018) (no expectation of privacy in someone else's Facebook account).

If Petitioner believes that he has a reasonable expectation of privacy in the Charter IP address associated with BB's account—presumably because he used that very connection to log into his "aftermatters" Kik account—he is mistaken.[3] As with basic subscriber information, there is no reasonable expectation of privacy in IP addresses, Rosenow, 50 F.4th at 738, because "that information is also conveyed to and, indeed, from third parties, including ISPs." Christie, 624 F.3d at 574; United States v. Forrester, 512 F.3d 500, 510 (9th Cir. 2008) ("IP addresses are not merely passively conveyed through third party equipment, but rather are voluntarily turned over in order to direct the third party's servers."). Thus, the person to whom the IP address was registered (BB) nor a former user (Petitioner) could challenge the "search" of this information, because "there is no legitimate

[3] The United States can only surmise that this is Petitioner's position, as he never actually articulates why he believes he has a reasonable expectation of privacy in the Charter information. (*See generally* Pet. Br.)

expectation of privacy in such information" to begin with. Rosenow, 50 F.4th at 738. By extension then, there could be no Fourth Amendment violation that would preclude use of such information.

2. *Petitioner lacks standing to challenge the search of 4 Beard Drive; even if he could, it would fail.*

As with the Charter subscriber information, Petitioner never explains why he "personally" had a reasonable expectation of privacy in BB's residence at 4 Beard Drive at the time it was searched, Carter, 525 U.S. at 88, such that he would have standing to challenge the search as unconstitutional. (*See generally* Pet. Br.) At most, he cursorily claims that he "had a reasonable expectation of privacy" therein. (Pet. Br. at 16.) But that is not enough. *See, e.g.,* Kelley v. Russell, No. 20-cv-162-PB, 2020 U.S. Dist. LEXIS 247458, at *16-17 (D.N.H. Dec. 28, 2020) (Fourth Amendment claim must be based on "non-conclusory allegations" that demonstrate movant's reasonable expectation of privacy in thing searched); United States v. Core, S 91 Cr. 423 (CSH), 1992 U.S. Dist. LEXIS 6897, at *1 (S.D.N.Y. May 12, 1992) (denying suppression where defendant's "only effort" to meet his burden of demonstrating standing was "a conclusory statement that he had a reasonable expectation of privacy in the car and the contents of the car").

That Petitioner previously resided at 4 Beard Drive does not mean he has Fourth Amendment standing to challenge a search that occurred while he was *not* residing there. *See* United States v. Ayala, 26 M.J. 190, 191 (C.M.A. 1988)

(appellant had no reasonable expectation of privacy in his former military quarters even though he "retained some residual responsibility" for them, because they no longer served as his residence); United States v. Cuong Tran, No. 09-172 MJD/SRN, 2009 U.S. Dist. LEXIS 100357, at *43 (D. Minn. Oct. 9, 2009) ("[A]n individual does not have an objective reasonable expectation of privacy in a former residence."). The First Circuit's analysis in United States v. Gomez, 770 F.2d 251 (1st Cir. 1985), is instructive in this regard. In Gomez, the Court found that the defendant had no reasonable expectation of privacy in an apartment—despite being the lessee—because there was "no evidence that [he] had possession or control of the premises," given that he was "living elsewhere, had not lived in the premises for four months prior to the search, and… that the one living in the premises was his brother." Id. at 254.

This case is not so different. By the time law enforcement searched 4 Beard Drive in January 2022, Petitioner was living elsewhere (overseas), had not lived in the premises for some time (over three months), and did not have possession or control of the premises (which occupied by BB and registered in his name). *See* id. That Petitioner was living elsewhere by virtue his military deployment does not necessarily excuse his absence. (*See* Pet. Br. at 17 ). As this Court has noted, "in some cases, military orders might well provide the circumstances that defeat an expectation of privacy in a particular place." United States v. Salazar, 44 M.J. 464,

467 (C.A.A.F. 1996). Unlike in Salazar, where a servicemember who was away from his marital home for several weeks due a commander's order to move into the barracks retained a reasonable expectation of privacy in his private home due to his "unique familial relationship" with its residents, id., no such relationship or unique circumstances exist here. Thus, like the appellant in Gomez, Petitioner did not have a reasonable expectation of privacy in 4 Beard Drive in January 2022—his prior residency notwithstanding.

Finally, even assuming *arguendo* that Petitioner could show that he had a reasonable expectation of privacy in 4 Beard Drive, his claim would fail because the search warrant did not contain "false information." Unlike the February 2022 affidavits—with which the military judge took issue based on their erroneous characterization of 76.71.6.249 as an "upload" IP address—the affidavit for 4 Beard Drive fairly asserted that 76.71.6.249 was simply "associated" with the "aftermatter" account. (*See* App. Ex. IV, Atch. 4; *cf.*, Atch. 7.) Thus, even if Petitioner could challenge the search, he would have no grounds for success.

**B. AFCCA appropriately disregarded arguments that Petitioner lacked standing to make.**

In taking issue with AFCCA's failure to consider his arguments about the searches of BB's Charter information and 4 Beard Drive, (Pet. Br. at 20), Petitioner forgets that courts are not required to address arguments that lack merit: "[A] court need not elaborate or give reasons for rejecting claims which it regards

as…without merit." Sumner v. Mata, 449 U.S. 539, 548 (1981); Swift & Co. v. United States, 343 U.S. 373, 386 (1952) (opining that certain arguments "without merit…do not require discussion"). Here, because Petitioner lacked standing to challenge law enforcement's searches of BB's Charter account and 4 Beard Drive, AFCCA was not only right to disregard them, but free to forego discussing them. *See, e.g.,* United States v. Flores, 64 M.J. 451, 452 (C.A.A.F. 2007) (concluding that appellant lacked standing to challenge legality of a search and declining to address claim that evidence should have been suppressed).

Petitioner, for his part, asserts that Dandridge v. Williams, 397 U.S. 471, 475 n.6 (1970), permits relief on this "alternative ground." (Pet. Br. at 20-22.) Citing a footnote, Petitioner attempts to transform dicta from a case about Fourteenth Amendment's equal protection clause into an all-powerful legal doctrine that would override a bedrock principle of Fourth Amendment jurisprudence—the requirement for a defendant to have a reasonable expectation of privacy in property or premises before he can challenge the search. *See* Rakas, 439 U.S. at 134. This Court should decline to entertain such a proposition.

That a litigant "may…assert in a reviewing court any ground in support of his judgment, whether or not that ground was relied upon or even considered by the trial court," Dandridge, 397 U.S. at 475, does *not* mean that they can assert rights they never had or leverage arguments that they would ordinarily lack

standing to make. *See* Langnes v. Green, 282 U.S. 531, 538-39 (1931) (a litigant "may not attack the decree with a view …to enlarging his own rights thereunder"). As the Supreme Court has more recently noted: "[E]ven a successful applicant doing no more than defending his judgment on appeal is confined to those alternative grounds present in the record: *he may not simply argue any alternative basis*, regardless of its origin." Jennings v. Stephens, 574 U.S. 271, 279 (2015) (emphasis added).

As applied to Petitioner, this means that he cannot defend the military judge's suppression ruling on the grounds that the searches of BB's Charter information and 4 Beard Drive were unconstitutional, for the record demonstrates that Petitioner had no reasonable expectation of privacy in either. And since "[a] person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed," Rakas, 439 U.S. at 134, it was not only fair, but proper, for AFCCA to disregard Petitioner's arguments regarding his "alternative ground for relief." Accordingly, his claim is without merit and this Court should deny review.

## CONCLUSION

Ultimately, "[w]hen reviewing matters under Article 62(b), UCMJ, the lower court may act only with respect to matters of law." United States v. Baker, 70 M.J. 283, 287-88 (C.A.A.F. 2011); 10 U.S.C. § 862. And while Fourth Amendment standing is a question of law, "such an inquiry involves important factual determinations." United States v. Iraheta, 764 F.3d 455, 461 n.6 (5th Cir. 2014). Given the absence of factual determinations on which a court could determine the reasonableness of Petitioner's purported expectations of privacy in BB's Charter account or residence, it is unsurprising that AFCCA did not consider his "alternative grounds for relief." If Petitioner is convicted, he will have an opportunity to raise these issues again during the "ordinary course of appellate review." *See* Fink v. Y.B., 83 M.J. 222, 223 (C.A.A.F. 2023). Thus, there is no need for this Court to grant review at this time, and the United States respectfully requests that this Honorable Court deny the petition for review.

KATE E. LEE, Maj, USAF
Appellate Government Counsel
Government Trial & Appellate Operations
United States Air Force
1500 W. Perimeter Rd., Ste. 1190
Joint Base Andrews, MD 20762
(240) 612-4800
Court Bar No. 37241

MARY ELLEN PAYNE
Associate Chief
Government Trial & Appellate Operations
United States Air Force
1500 W. Perimeter Rd., Ste. 1190
Joint Base Andrews, MD 20762
(240) 612-4800
Court Bar No. 34088

MATTHEW D. TALCOTT, Col, USAF
Chief
Government Trial & Appellate Operations
United States Air Force
1500 W. Perimeter Rd., Ste. 1190
Joint Base Andrews, MD 20762
(240) 612-4800
Court Bar No. 33364

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was transmitted by electronic means to the Court and Air Force Appellate Defense Division on 17 February 2026.

KATE E. LEE, Maj, USAF
Appellate Government Counsel
Government Trial & Appellate Operations
United States Air Force
1500 W. Perimeter Rd., Ste. 1190
Joint Base Andrews, MD 20762
(240) 612-4800
Court Bar No. 37241

## CERTIFICATE OF COMPLIANCE WITH RULE 24(b)

This brief complies with the type-volume limitation of Rule 24(b) because:

This brief contains 4558 words.

This brief complies with the typeface and type style requirements of Rule 37.

/s/ Kate E. Lee, Maj, USAF

Attorney for the United States (Respondent)

Dated: 17 February 2026